

1951

July 6

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CONCORD, N.H.

Mr. Newell Brown, Director,
Division of Employment Security
32 South Main Street
Concord, New Hampshire

Dear Newell:

This will acknowledge receipt of your inquiry relative to the availability of legislators for benefits under the Unemployment Compensation Act while attending the Legislature.

In reference to your question concerning the obligation to attend each session of the Legislature, the Supreme Court, while not speaking in terms of a contract between the legislator and his constituents, has stated that "it is obvious that at least while the Legislature is in session, he [a legislator] could not perform other work during the day for three days a week." Donkey v. Riley, 96 N.H. 351 at 352.

The New Hampshire Constitution requires that members of both the House and Senate attend seasonably and that they shall not depart without license. Art. 15, Part Second, Constitution of New Hampshire. Members who do not so attend and remain are not eligible for their pay. Art. 15, Part Second, Id.; and see Section 15, chapter 9, Revised Laws, as amended by section 1, Chapter 117, Laws of 1949. The rules of the House and Senate require such attendance. See House Rule 33 and Senate Rule 7.

There is no distinction made between the first week in which the Legislature sits and any subsequent week. Art. 3, Part Second, of the Constitution of New Hampshire, states that the Legislature shall meet "biennially on the first Wednesday of January and at such other times as they may judge necessary".

It is therefore my opinion that the legislators are under an obligation to attend the legislative session. This obligation is binding if the Legislature is in session regardless of the amount or type of work before it.

In reference to your second question relative to who has the authority to reopen appeals under section 5-C of chapter 218 of the Revised Laws, as amended, it is my opinion that this power rests in the director

Mr. Howell Brown

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of the Division of Employment Security:

" . . the authority and power of the labor commissioner as provided in chapter 211 and chapter 218 of the Revised Laws, as amended, are hereby transferred to the director and he is hereby authorized to act in the name or stead of the labor commissioner in all matters pertaining thereto." Section 9, Part 18, chapter 5, Laws of 1950, as amended by section 1, chapter 105, Laws of 1951.

The Director is appointed by the Labor Commissioner subject to the approval of the Governor and Council. Section 5, Part 18, chapter 5, Laws of 1950. He is removable only by the Governor and Council under section 7, Part 18, of said chapter 5.

These provisions indicate a legislative intent to transfer the authority and powers of the Labor Commissioner under chapter 218 of the Revised Laws, as amended, to the Director. It is my opinion that the Commissioner of Labor no longer has authority or power to reopen any appeals under section 5-C of said chapter 218.

Very truly yours,

Gordon M. Tiffany
Attorney General

GGD:RP

CC: William D. Chamberlin, Director,
Unemployment Compensation Bureau
Division of Employment Security

Maurice LaForce, Esq.,
Division of Employment Security